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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ANGEL R., JR., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. ANGEL R., JR., Objector and Appellant.	G057180 (Super. Ct. No. DP026196-001) O P I N I O N

Appeal from orders of the Superior Court of Orange County, Antony C. Ufland, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Objector and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Deborah B. Morse, Deputies County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Angel R., Jr. (Angel), a minor, appeals from two orders of the juvenile court. One is an order denying a hearing on his petition under Welfare and Institutions Code section 388.[1] The other is an order terminating dependency jurisdiction and closing the case, as recommended by Orange County Social Services Agency (SSA).

We affirm the order terminating juvenile court jurisdiction. Under section 364, Angel had to demonstrate that there were *no disputed facts* regarding whether SSA's continued supervision was necessary, that he was entitled to keep the case open *as a matter of law*. He did not carry this burden. Because we agree with the juvenile court that the case should be closed, the appeal from the order denying the hearing on Angel's section 388 petition is moot, and that appeal is dismissed.

FACTS

SSA detained eleven-year-old Angel and his four siblings in May 2015, after their mother, Liliana G., tried to commit suicide by hanging herself in the garage while the children were in the house. This was her second suicide attempt in less than a year. SSA placed two of the children with their respective fathers. An older boy was residing with his girlfriend's family, after Liliana had kicked him out of her house. Angel and his elder sister, Ruby, were placed with maternal relatives and then, on May 13, 2015, with "non-related extended family members." Their father, Angel, Sr., could not immediately be located and, in any event, had an extensive criminal record.

Angel, Sr., phoned SSA sometime in early May after learning that Angel and Ruby had been detained. He stated that if the children could not be placed with him, he wanted them placed with their paternal great-aunt Rosa, who had cared for Angel for most of his life and had cared for Ruby between the ages of two and eight. He and Rosa attended the detention hearing on May 15.

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[1] All further statutory references are to the Welfare and Institutions Code.

At the detention hearing, the court ordered Angel and Ruby detained, set visitation for Liliana and Angel, Sr., and ordered reunification services. The hearing on jurisdiction and disposition, originally set for June 29, was continued to August 26, 2015.

Angel, Sr., did not follow up with SSA on reunification services. He told the social worker that he did not see any possibility of obtaining custody of his children and felt that going to court and meeting with social workers was a waste of his time. He later agreed to meet with a social worker, but did not show up and did not return the social worker's phone calls. He also declined to visit. Angel's caretakers reported that Angel referred to his father as a "druggie" and told them he (Angel) was "a one night stand mistake."

At the jurisdiction and disposition hearing on August 26, the court vested custody in SSA, approved a case plan for Liliana, and allowed the visitation order for Angel, Sr., to stand, even though he had not contacted SSA. As far as this record indicates, Angel, Sr., had no further contact with Angel.[2]

Liliana's visits with the children increased over the months until she was having nine hours of unsupervised visitation weekly as of February 2016. She visited consistently and worked on her case plan. The children's first overnight visit in Liliana's new apartment took place on May 29 and was successful.

The court set the 12-month review hearing for July 5, 2016. It was anticipated that Angel and Ruby would return home at that time.

Liliana obtained custody of Angel and Ruby in September 2016, when Angel was 12. Although Ruby adjusted fairly well to the new setting, Angel did not. He and Liliana fought and argued. He was constantly getting in trouble at school, including a threat to "'shoot up the school.'" Exacerbating the existing tension, his grandmother, to

[2] Angel, Sr., scheduled a visit for May 3, but Angel refused to visit with him. Angel, Sr., had dinner with Ruby. Angel, Sr., had two more visits with Ruby in June; again Angel refused to visit with his father. "I am done with him."

whom he was very close, and Angel, Sr., died within a month of each other. Angel mourned his grandmother's passing, and he regretted that he could now never have a relationship with his father. Nevertheless, Angel refused to work with his assigned therapist.

After a full-scale blowup between mother and son at a team meeting in July, Liliana agreed to allow Angel to live temporarily with his paternal uncle, Pablo R. SSA agreed to a three-month respite stay at Uncle Pablo's home, to begin in August 2018.

Angel became much calmer with Uncle Pablo. His grades and his behavior at school improved markedly, and his disrespectful attitude diminished. Angel refused to continue his therapy sessions, however, even after SSA specified male therapists for him. Either he refused to go at all, or, if he did go, he refused to talk. Consequently, the underlying causes of his distress and aggression could not be addressed.

SSA, Liliana, and the children began discussing closing the case in October 2018. Initially, Angel was in favor. Liliana was ambivalent, stating she had come to rely on the social workers' and her therapist's support. At a team meeting in mid-October, the social worker stated SSA would recommend case closure at the next hearing in November. Angel, who was still living with Uncle Pablo, stated he did not want to return to Liliana's care. He did not, however, file a section 388 petition at that time.[3]

At the last review hearing, in December 2018, SSA recommended that the case be closed. Angel had just turned 15, and Liliana had had custody for over two years.

Angel responded with a section 388 petition, asking the court to order legal guardianship or long-term foster care for Uncle Pablo. Angel did not want to go back to Liliana. Recognizing that Angel's petition, in effect, sought to divest Liliana of custody,

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[3] At the hearing on November 8, 2018, the court accepted a stipulation to postpone the hearing, "contested by minor's attorney due to the recommendations," to December 17. Angel's section 388 petition was not filed until December 17, the first day of the hearing.

the juvenile court denied the petition without a hearing, on the grounds that Angel had not presented prima facie evidence of a sufficient change of circumstances or prima facie evidence that removing custody from his mother was in his best interest.

The court then moved on to the review hearing and specifically to SSA's request to terminate jurisdiction. The social worker testified that Liliana was not abusing or neglecting Angel. The social worker also testified that, although Liliana had been availing herself of services on offer, particularly counseling, Angel had not. Therefore the social worker did not see what more SSA could do and "the matter should [be] resolve[d] within the family." Angel and Liliana also testified.

On the second day of the hearing, the juvenile court terminated jurisdiction, stating that the reasons for initiating or continuing dependency no longer existed. The court had some stern admonitions for both Liliana and Angel, but it agreed with SSA that juvenile court was not the arena in which to work out their problems.

Angel has appealed from both the order denying a hearing on his section 388 motion and the order terminating jurisdiction.

DISCUSSION

I. Termination of Jurisdiction

Section 364, subdivision (a), provides, in pertinent part: "Every hearing in which an order is made placing a child under the supervision of the juvenile court pursuant to Section 300 and in which the child is not removed from the physical custody of his or her parent or guardian shall be continued to a specific future date not to exceed six months after the date of the original dispositional hearing." This subdivision applies to children who have initially been removed from parental custody and subsequently returned. (*In re N. S.* (2002) 97 Cal.App.4th 167, 172.) Section 364, subdivision (c) provides: "After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary. The court *shall* terminate its jurisdiction *unless* the social worker or his or her

department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn." (Italics added.)

The language of the statute makes it clear that termination of jurisdiction is the default. (*In re N.O.* (2019) 31 Cal.App.5th 899, 923 (*N.O.*).) The party wanting jurisdiction to continue must establish either that (1) conditions still exist that justify jurisdiction or (2) conditions justifying jurisdiction will recur if supervision is withdrawn. "Without that evidence, the court was required by section 364, subdivision (c) to terminate its jurisdiction." (*In re N.S., supra,* 97 Cal.App.4th at p. 173.)

Because the wording of section 364 places the burden of proof on the party opposing termination, the substantial evidence standard does not apply here, where a party appeals termination. Instead, we review the issue as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528-1529.) The correct standard of review is fatal to Angel's appeal.

Angel's argument on this issue consists of a verbatim reproduction of the equivalent section in *N.O., supra,* 31 Cal.App.5th at pp. 924-926, which in turn relied heavily on the analysis of *In re Aurora P.* (2015) 241 Cal.App.4th 1142 (*Aurora P.*). The *N.O.* court noted that, under *Aurora P.* and in light of the statutory distribution of the burden of proof, "the issue on appeal was '"whether the evidence compels a finding in favor of the appellant[s] *as a matter of law*."' [Citations.]" (*N.O., supra,* 31 Cal.App.5th at p. 1925.)

The *N.O.* court went on to explain what "matter of law" meant in terms of the facts of *Aurora P.*, an explanation omitted from Angel's brief. "The [*Aurora P.*] court noted the minors ignored the evidence from the welfare agency that found 'no safety concerns' and that the mother 'had alleviated the conditions that led to initial assumption of jurisdiction.' (*Ibid.*) The court further noted that the minors made 'almost no effort' to refute the evidence supporting termination, and instead merely 'direct[ed the

court] to evidence in the record that might have supported a conclusion different from that reached by the juvenile court. "Here, as in many dependency cases, the case posed evidentiary conflicts. And, as is common in many dependency cases, this case obligated the juvenile court to make highly subjective evaluations about competing, not necessarily conflicting, evidence. . . . It is not our function to retry the case. We therefore decline [the minors'] implicit invitation to review the record so as to recount evidence that supports [their] position (reargument) with the object of reevaluating the conflicting, competing evidence and revisiting the juvenile court's failure-of-proof conclusion." [Citation.] This is not a case "where undisputed facts lead to only one conclusion." [Citations.]' [Citation.] As such, the court in *Aurora P.* found the minors had failed to meet their burden on appeal." (*N.O.*, *supra*, 31 Cal.App.5th at pp. 925-926.)

Like the minors in *Aurora P.*, Angel has made almost no effort to refute the evidence supporting termination and instead recites the evidence that might have supported a different conclusion. He does not dispute the evidence presented of Liliana's stable employment and housing, her completion of her case plan, her progress in therapy, her acknowledgement of her responsibility for the events leading up to dependency, and, most of all, SSA's conclusion that it had nothing more to offer the family in terms of services, especially considering Angel's refusal to participate in counseling or therapy.

Angel wants us to review the record so as to recount evidence to support his position, but this is not a case where undisputed facts lead to only one conclusion, as is required when an issue is reviewed as a matter of law. (See, e.g., *Czajkowski v. Haskell & White, LLP* (2012) 208 Cal.App.4th 166, 175-176.) It is not our function to retry the case.

Angel failed to meet his burden to show undisputed facts leading to an inevitable conclusion that conditions still exist to justify jurisdiction or that if SSA withdraws its supervision, the conditions will recur. Like the courts in *Aurora P.* and *N.O.*, we must affirm the juvenile court's decision to terminate jurisdiction.

At the time the court terminated jurisdiction, Liliana's and Angel's relationship was still very much a work in progress. Angel had more than the ordinary share of teenage angst, and he badly needed a positive male role model, a position Uncle Pablo appeared to be filling. For her part, Liliana unquestionably has a short fuse. One of the skills she had to acquire during the dependency period was the ability to think before she spoke or acted.

But it is not the function of the juvenile court to act as referee between short-tempered parents and obstreperous teenagers. That is a family matter, and it is best left to Liliana and Uncle Pablo to decide. The juvenile dependency system exists to "provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.) Although Angel had been at risk of being emotionally abused or neglected in the past, the court determined he was no longer subject to either risk. Liliana substantially complied with her case plan, and, at the time the court terminated jurisdiction, she had had custody of both Angel and Ruby for over two years, under SSA supervision. She presented evidence that she could function adequately as a parent without this oversight, and "perfection belongs to the gods." We can't require it.

II. Hearing on Section 388 Petition

Section 388, subdivision (a)(1), provides, in pertinent part: "[T]he child himself or herself . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made . . . . The petition shall be verified and . . . shall set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order or termination of jurisdiction." Section 388, subdivision (d) provides, in pertinent part: "If it appears that the best interests of the child . . . may be promoted by

the proposed change of order, . . . the court shall order that a hearing be held . . . ." (See Cal. Rules of Court, rule 5.570(d)(2).)

Angel has appealed from the denial of his section 388 petition without a hearing. The criterion for holding a hearing on a section 388 petition is a prima facie showing of (1) a change of circumstance or new evidence and (2) promotion of the child's best interests. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) As petitioning party, Angel had the burden of proof on both issues. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) We review an order denying a hearing on a section 388 petition for abuse of discretion. (*In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250.)

Regardless of whether the court should have held a hearing, because we have affirmed the juvenile court's order terminating jurisdiction in the absence of the evidence necessary to keep the case open, this issue is now moot. We cannot provide effective relief. (See *In re N.S.* (2016*)* 245 Cal.App.4th 53, 60 [issue moot if appellate court cannot provide effective relief even if reversible error].)

The order from which Angel appeals is the juvenile court's order denying a hearing on his section 388 petition. To allow for such a hearing, we would have to reverse the juvenile court's order terminating jurisdiction – an order we have affirmed. Even if we were to reinstate jurisdiction for a limited purpose, the best we could do is to remand with an order to hold a hearing. We cannot order the court to grant the petition. Among other effects, granting the petition would divest Liliana of custody. On this record, the likelihood that the juvenile court would take custody away from Liliana is remote to nonexistent. And we certainly cannot order the court to pick legal guardianship over foster care, the only alternative that would survive termination of dependency jurisdiction, which we have endorsed. (See *In re D.R.* (2007) 155 Cal.App.4th 480, 487.) "Because we are unable to fashion an effective remedy, the appeal is moot." (*In re Pablo D.* (1998) 67 Cal.App.4th 759, 761.)

DISPOSITION

The order terminating jurisdiction is affirmed. The appeal from the order denying a hearing on appellant's section 388 motion is dismissed as moot.

BEDSWORTH, ACTING P. J.

WE CONCUR:

THOMPSON, J.

GOETHALS, J.